



Margaret L. Sanner
Direct Phone: 804-344-3444
Email: msanner@reedsmith.com

Reed Smith LLP
Riverfront Plaza - West Tower
901 East Byrd Street, Suite 1700
Richmond, VA 23219-4068
+1 804 344 3400
Fax +1 804 344 3410
reedsmith.com

June 26, 2009

Hon. Jean Cunningham
Chair
Virginia State Board of Elections
1100 Bank Street
Richmond, VA 23219

Proposed Regulations on Voter Residency

Dear Madam Chair:

Having reviewed the proposals thus far submitted by Task Force participants, the Lawyers Committee for Civil Rights Under Law (LCCRUL) respectfully proffers the comments outlined below.

Endeavoring to implement the legislative charge to the Task Force is critical. The General Assembly's recent amendments made important changes to the election code. First, legislators deleted from § 24.2-101's definition of "residence"/"resident" the prior authorization to determine domicile by considering enumerated factors (*e.g.*, a person's "financial independence, business pursuits, employment, income sources, residence for income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the person, motor vehicle and other personal property registration, and other factors reasonably necessary to determine the qualification of a person to register or vote."). Second, legislators added language to the provision which made clear that residency turns on two concepts: domicile (living in a particular locality with the intention to remain), and a place of abode (the physical place where a person dwells). Third, the General Assembly charged the State Board of Elections with promulgating regulations to "ensure the uniform application of the law for determining a person's residence." *See* Va. Code § 24.2-404(D).

The proposals proffered by the SBE/AG staff and the ACLU both appear carefully to reflect these legislative decisions and the constitutional constraints (Virginia and federal) which must guide this inquiry. The SBE/AG version, in particular, set out a constructive methodology that both guides registrars in identifying the existence of relevant individual circumstances and explains how to handle the responses in a manner that does not appear to impose unreasonable administrative burdens and would also promote statewide uniformity of implementation. *See* SBE proposal, §§ 16-18.

By contrast, we respectfully note that the thoughtful proposal requiring all would-be registrants to complete a lengthy questionnaire on subjects like tax payment history, vehicle registration, employment history, property ownership and the like seems less workable for several reasons. First, processing the attendant paperwork would impose significant and unnecessary burdens on the staff in registrars'

offices. Moreover, it would seem anomalous, and could lead to litigation, if the SBE were to reinstate *by regulation* the very considerations whose use the General Assembly *legislatively* deleted. Further, use of such questionnaires seems to contradict the mandate of uniform application when numerous decisions as to how to evaluate the legal significance of factually complicated responses would be up to the discretion of individuals in each locality of the Commonwealth.

Finally, we would make a few changes to the language suggested in the SBE proposal. Some are intended to eliminate potential confusion and to conform more closely to the definition of domicile found in existing Virginia law. For example, in § 1, we would remove the concept of “home” from the definition; and in §2, we would delete language that apparently forbids registration, not only to most students, but even to a non-student Virginian who plans to relocate to another state when her 12-year-old daughter graduates from high school. We also propose adding language regarding members of the military as suggested by Mr. Goodman. *See* §16, below. Moreover, we appreciate the clarification provided by registrar members at the last session to the effect that changes in the nature of necessary corrections may be (and are) made to the voter rolls after the pre-election close of the poll books; we accordingly urge the inclusion of a provision, originally suggested by the ACLU, to ensure that qualified individuals who respond to registrars’ proper requests for supplemental information are timely enrolled, even though the corrections are made after the last day of registration. *See* below at § 18.

1) Definitions:

a) ***“Domicile.” To establish domicile, a person must live in a particular locality with the intention to remain.*** [Domicile is a place, usually a person’s home.]

[b) Home is the place where a person dwells and which is the center of his domestic, social and civil life.]

d) ***“Place of abode.” A place of abode is the physical place where a person dwells.***

2) Required Intent:

a) A person who intends to ***maintain a place of abode*** in a location [forever] ***for an indefinite period*** has established the required intent for the purposes of establishing domicile.

[b) A person with specific intent to leave his current location at a fixed date in the future has not established the requisite intent for he purposes of establishing domicile.]

b) A person who intends to maintain a place of abode in his current location at the time of both registration and election has established the requisite intent for the purposes of establishing domicile, even if such person may leave his current location at some point in the future.

3) ***Residency shall be broadly construed to provide all persons with the opportunity to register to vote.*** Nothing in this regulation shall be construed to confer upon any person any additional privileges of benefits other than the right to register to vote and to be qualified to vote in an election.

7) [In the event that a person's habitation is not a traditional residence associated with real property, then the location of the usual sleeping area for the person shall be controlling as to the residency of that person. Residency shall be broadly construed to provide all persons with the opportunity to register to vote.] **DELETE AS ENCOMPASSED BY # 9.**

11) If [a person's home] ***the place where a person lives*** is destroyed or rendered uninhabitable by fire or natural disaster, the person does not lose residence in the precinct of the [home] ***destroyed location*** [is located] if the person intends to return to ***such place*** when it is reconstructed or made habitable unless he has either established a new domicile or has changed his registration to an address outside the precinct.

14) If a college student intends to ***maintain a place of abode*** [make his home] in the jurisdiction where he is physically present for the purpose of attending college [and has no specific intent to return to his former home after graduation], then he may claim the college jurisdiction as his domicile. A college student does not need specific intent to stay in the college jurisdiction beyond graduation in order to establish domicile there.

16) ***If a member of the armed forces of the United States, stationed in Virginia, intends to maintain a place of abode in the jurisdiction where he is physically present for the purpose of his military service, then he may claim the jurisdiction as his domicile. A member of the armed forces of the United States, stationed in Virginia, does not need specific intent to stay in the jurisdiction beyond his term of service in Virginia in order to establish domicile there.***

17) The general registrar shall ask a person to provide . . .

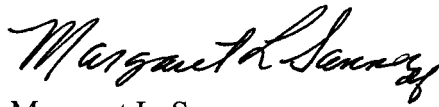
18) ***If a registrant responds to a mailing or other communication from the registrar pursuant to § 17 hereof with sufficient information to be assigned to a voting precinct, the registrant shall be registered as of the date that his application was received by the registrar or state-designated registration agency, or, if mailed, by the date postmarked.***

Hon Jean Cunningham
June 26, 2009
Page 4

ReedSmith

Thank you for considering these comments. We look forward to the next meeting to discuss these issues.

Sincerely,

A handwritten signature in cursive script, reading "Margaret L. Sanner".

Margaret L. Sanner

mls

cc: Members, Task Force on Residency